

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORNEL JACKSON,

Plaintiff,

v.

KHALIB, et al.,

Defendants.

Case No. 1:20-cv-01567-SKO (PC)

**ORDER AND FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS**

Clerk of the Court to Assign DJ

Plaintiff Cornel Jackson is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT PROCEDURAL BACKGROUND

On September 10, 2021, Plaintiff filed a first amended complaint. (Doc. 9.)

On December 21, 2022, this Court issued its Second Screening Order, finding Plaintiff had stated a cognizable retaliation claim against certain named Defendants and an equal protection claim against a single named Defendant. (Doc. 11.) Plaintiff was provided three options for proceeding: (1) filing a notice electing to proceed only on those claims deemed cognizable by the Court; *or* (2) filing a second amended complaint, curing the deficiencies identified in the Court's order; *or* (3) filing a notice of voluntary dismissal. (*Id.* at 13.)

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On January 9, 2023, Plaintiff filed a Notice to Proceed on the Cognizable Claims. (Doc. 12.) Plaintiff advised he wished to “proceed on the claims deemed cognizable by the court for purposes of starting litigation, but the plaintiff respectfully objects to the court’s [decision] with the respect of plaintiff’s conspiracy claim, which the order stated the plaintiff’s first amended complaint failed to state a claim which relief can be granted. Plaintiff doesn’t wish to wave any more time and wishes to proceed at this time.” (*Id.* at 2.) Plaintiff stated: “For the reasons set forth above, the plaintiff wishes to proceed on his cognizable claims of retaliation against the defendants Khalib, Alva, Quick, Villanueva, Lesage, Townsend, Cpl. Rivera, and Officer P. Rivera, and an equal protection violation against Defendant Garza.” (*Id.* at 3.)

II. ORDER

The Court CONSTRUES Plaintiff’s January 9, 2023, filing as a notice to proceed only on the claims found cognizable by the Court as set forth in the title and in the notice itself. To the extent Plaintiff notes an objection regarding a conspiracy claim, he may raise the matter in objections to the district judge who will be assigned to this action.

The Clerk of the Court is DIRECTED to randomly assign a district judge to this action.

III. FINDINGS AND RECOMMENDATIONS

For the reasons set forth in the Court’s Second Screening Order (Doc. 11), the Court RECOMMENDS that the claims in Plaintiff’s first amended complaint be DISMISSED, *except* for the claims of retaliation against the named Defendants Khalib, Quick, Alva, Villanueva, Lesage, Townsend, Cpl. Rivera, and Officer P. Rivera, and the claim of equal protection violation against named Defendant Garza, pursuant to 42 U.S.C. § 1983.

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, a party may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of

1 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
2 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: **January 20, 2023**

/s/ Sheila K. Oberto
6 UNITED STATES MAGISTRATE JUDGE